



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ACTION MEMORANDUM

SUBJECT: Ceiling Increase under the Consistency Exemption for the Time-Critical Removal Action at the 35th Avenue Site, Birmingham, Jefferson County, Alabama

FROM: Subash Patel, On-Scene Coordinator
Emergency Response, Removal, Prevention, and Preparedness Branch

THRU: James W. Webster, Ph.D., Chief
Emergency Response, Removal, Prevention, and Preparedness Branch

TO: Franklin E. Hill, Director
Superfund & Emergency Management Division

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the proposed ceiling increase under a consistency exemption for the 35th Avenue Site (Site) located in Birmingham, Jefferson County, Alabama. The memorandum amends the Action Memorandum dated July 23, 2015. The requested ceiling increase is intended to address about 245 residential properties. The 245 residential properties include 65 properties where volunteer access has been granted, another 150 properties contingent on securing access in the North Birmingham area including Collegeville, Fairmont, and Harriman Park communities, and an estimated 30 out of 61 remaining occupied residential properties that may voluntarily provide the EPA access to sample and conduct a removal action if needed. The total project ceiling for this time-critical removal action will be **\$43,877,000** which will be funded through the Regional Removal Allowance. Pending a change in Site conditions or scope, implementation of the actions proposed in this document will bring the total number of properties addressed through this removal to approximately 670, thus completing the overall removal action.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID: ALN000410750
Site ID #: B4M3
Removal Category: Time-Critical Removal Action

All information pertaining to Site conditions and background identified in the original Action Memorandum of September 25, 2013, and subsequent Action Memoranda, remain the same in this amended Action Memorandum.



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To date, there have been five Action Memoranda approved for the Site. The original Action Memorandum dated September 25, 2013, documented approval of a time-critical removal action and included approval of an emergency exemption to the \$2,000,000 statutory limit. A March 12, 2014, Action Memorandum identified a change in scope to fully address Remedial, as well as the Removal, goals to minimize disruption of the affected homeowners in the community. These two Action Memoranda described removal activities to address Phase 1 properties, which consisted of residential parcels considered as Tier 1. Tier 1 is defined as residential properties where the lead concentration in soil was at least three times above the Site Residential Removal Management Level (RML) and/or arsenic and/or benzo(a)pyrene Toxic Equivalence Quotient (TEQ) concentrations were ten times the Site Residential RML.

The August 11, 2014, Action Memorandum documented approval of the 12-month statutory limit and a removal action to address Phase 2 which consisted of parcels not meeting Phase 1 criteria, but where one or more RMLs were exceeded and where children reside or are regularly present. The January 6, 2015, Action Memorandum documented approval to exceed \$6,000,000 under the Consistency Exemption and implementation of a removal action to address Phase 3, which consisted of properties within the Site boundary with soil concentrations exceeding two times the RMLs for respective cancer-causing substances. The July 23, 2015, Action Memorandum proposed action to address Phase 4, consisting of approximately 260 additional properties having contaminated soil exceeding the RMLs.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

All information pertaining to threats to public health or welfare or the environment, and statutory or regulatory authorities described in the original Action Memorandum, dated September 25, 2013, and subsequent Action Memoranda still apply to this amended Action Memorandum.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare or the environment.

V. EXEMPTION FROM STATUTORY LIMITS

All information pertaining to exemptions from statutory limits described in the original Action Memorandum, dated September 25, 2013, and subsequent Action Memoranda dated March 12, 2014, August 11, 2014, January 6, 2015, and July 23, 2015, apply to this Amended Action Memorandum.

VI. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

The intent of this amended Action Memorandum remains focused on reducing the exposure

risk to the community members who live at or may use the properties that exceed the Site RMLs for one or more of the three contaminants of concern: arsenic, lead and benzo(a)pyrene TEQ. This action specifically addresses those properties where contamination meets the Site RMLs. The proposed actions include the following:

- a. Survey properties to verify current property use;
- b. Inventory existing plants, grasses, utilities and outbuildings on each property;
- c. Remove impediments, as allowed, to provide for an appropriate excavation effort;
- d. Excavate the contaminated soil down to a maximum depth of approximately 12 inches below ground surface where the soil exceeds the Site RMLs (excavation can exceed 12 inches if principal threat waste or source material is found at approximately 12 inches), or less than 12 inches if such excavation is sufficient to remove the contamination to levels below the Site RMLs from each property;
- e. Backfill with clean soil, shape to original contours and lightly compact;
- f. Replace or repair any EPA-damaged concrete, piping, fencing, outbuildings, etc.;
- g. Provide temporary on-site storage of contaminated soil generated during removal activities pending further waste characterization and profiling, treatment, reuse and/or recycling;
- h. Conduct in-situ/ex-situ screening and/or collect samples for laboratory analysis as necessary;
- i. Perform on-site treatment of characteristically hazardous waste, if appropriate;
- j. Arrange for off-site transportation and disposal/treatment of contaminated soil according to applicable regulations;
- k. Maintain Site security and limit access during implementation of the removal action;
- l. Conduct all removal actions pursuant to an EPA-approved Health and Safety Plan;
- m. Temporarily relocate residents if absolutely necessary during excavation activity; and
- n. Re-establish vegetation.

2. Contribution to Remedial Performance

The removal action proposed by this memorandum will be consistent with and not impede any remedial action that may be taken in the future. The scope of this action is to address the properties in the North Birmingham area communities of Collegeville, Fairmont, and Harriman Park where soil contaminant levels exceed one or more RMLs.

3. Applicable or Relevant and Appropriate Requirements (ARARs)

In accordance with the NCP at 40 CFR § 300.415(j), on-site removal actions conducted under CERCLA are required to attain applicable or relevant and appropriate requirements (ARAR) to the extent practicable considering the exigencies of the situation or provide grounds for invoking a CERCLA waiver under Section 121(d)(4). In determining whether compliance with ARARs is practicable, the lead agency may consider appropriate factors including (1) the urgency of the situation and (2) scope of the removal action to be conducted. Additionally, under 40 CFR § 300.405(g)(3), other advisories, criteria or guidance may also be considered (so-called To-Be-Considered or TBC) when conducting the removal action.

Under CERCLA Section 121(e)(1), federal, state or local permits are not required for the portion of any removal or remedial action conducted entirely on-site as defined in 40 CFR §300.5. See also 40 CFR §§300.400(e)(1) & (2). On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. On-site response actions must comply, to the extent practicable, with substantive but not administrative requirements of ARARs. Off-site activities such as transportation and disposal of wastes are required to comply with all applicable requirements, including the administrative portions.

As provided in CERCLA Section 121(d)(3) and the Off-site Rule at 40 CFR §300.440 *et seq.* the off-site transfer of any hazardous substance, pollutant or contaminant generated during the response action will be sent to a treatment, storage or disposal facility that is in compliance with applicable federal and state laws and has been approved by the EPA for acceptance of CERCLA waste.

The EPA has corresponded with the Alabama Department of Environmental Management (ADEM) regarding the ARARs for this Site. The EPA identified cleanup parameters as stated in this Action Memorandum and specifically requested identification of any State ARARs for the EPA's consideration prior to initiation of the on-site response action activities. ADEM identified some non-promulgated requirements and some "to be considered" requirements that the EPA has addressed in writing.

4. Project Schedule

Removal activities related to Site are ongoing and it is anticipated the estimated 245 additional properties will be completed in approximately three years contingent on securing access.

B. Estimated Costs

Extramural Costs:

<u>Regional Removal Allowance Costs:</u>	<u>Current Ceiling</u>	<u>Proposed Increase</u>	<u>Proposed Ceiling</u>
ERRS	\$22,262,000	\$12,000,000	\$34,262,000
<u>Other Extramural Costs Not Funded from the Regional Allowance:</u>			
START	\$ 4,115,000	\$ 1,800,000	\$ 5,915,000
Subtotal	\$26,377,000	\$13,800,000	\$40,177,000
<u>Costs Contingency</u>	<u>\$ 0</u>	<u>\$ 3,700,000</u>	<u>\$ 3,700,000</u>
TOTAL EXTRAMURAL COSTS	\$26,377,000	\$17,500,000	\$43,877,000

VII. OUTSTANDING POLICY ISSUES

No outstanding policy issues have been identified at this time.

VIII. ENFORCEMENT

Enforcement activities have been initiated and are ongoing. It is expected this action for the Site will be conducted as a fund-lead removal action. See Attachment 1, "Enforcement Addendum" for more details.

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$83,919,990 using the following formula:

$$(\text{Total Extramural Costs} + \text{Total Intramural Costs}) + (87\% (\text{Total Extramural Costs} + \text{Total Intramural Costs})) = \text{Estimated EPA Costs, or } (\$43,877,000 + 1,000,000) + ((87\% * (\$43,877,000 + 1,000,000))) = \$83,919,990$$

IX. RECOMMENDATION

This decision document represents a selected removal action for the 35th Avenue Site in Birmingham, Jefferson County, Alabama, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP section 300.415(b) criteria for a removal and the CERCLA section 104(c) consistency exemption from the \$2 million and 12-month limitations. I recommend your

approval of the proposed removal action. This removal action is anticipated to be fund-lead, with a total project ceiling, if approved, of \$43,877,000 which will be funded by the Regional Removal Allowance.

APPROVED: _____


Franklin E. Hill, Director
Superfund & Emergency Management Division

DATE: _____

5/29/19

DISAPPROVED: _____

Franklin E. Hill, Director
Superfund & Emergency Management Division

DATE: _____

Attachments:

Enforcement Addendum

Photographs (posted to www.epaosc.org/35Ave)

Figures (posted to www.epaosc.org/35Ave)

¹Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.